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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

JAN 27 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Implementation of the Cable )  
Television Consumer Protection )  
and Competition Act of 1992 )  
 )  
Rate Regulation )

MM Docket No. 92-266

**COMMENTS OF THE CONSUMER ELECTRONICS GROUP  
OF THE ELECTRONIC INDUSTRIES ASSOCIATION**

The Consumer Electronics Group of the Electronic Industries Association ("EIA/CEG") hereby responds to the Notice of Proposed Rulemaking ("Notice") in which the Commission has solicited comments concerning the regulation of rates for cable service, as required by the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act").<sup>1</sup> The lengthy Notice presents numerous questions on a wide variety of issues. EIA/CEG, however, will confine its response to one subject that is especially relevant to the consumer electronics industry: regulation of rates for leasing and installation of equipment at the premises of cable service subscribers.

**I. INTRODUCTION AND INTEREST OF EIA/CEG**

EIA/CEG represents the consumer electronics industry, an industry that provides the American public with televisions, radios, videocassette recorders and videocameras, compact disc players, and a wide variety of

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1/ Pub.L. No. 102-385, 106 Stat. 1460 (1992) ("Cable Act").

other products. Our membership includes most major consumer electronics manufacturers, as well as many smaller companies that design, produce, import, distribute, sell, and service electronics products. EIA/CEG has long played an active role in deliberations involving the interrelationships between video consumer equipment (such as TVs and VCRs) and cable television systems.

EIA/CEG supported passage of the Cable Act and is eager to participate in related implementation proceedings at the Commission.<sup>2</sup> In these efforts, EIA/CEG will seek to promote the congressional objectives of protecting consumers against abuses of market power and increasing competitive opportunities for service and equipment suppliers. Those objectives are very much at stake in the equipment section of the Notice on rate regulation.

## II. DISCUSSION

EIA/CEG's primary interest in this particular proceeding relates to Section II.A.3.d. of the Notice, which concerns regulation of rates for equipment cable

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<sup>2/</sup> EIA/CEG has an interest in several of the issues to be considered in proceedings to implement the Cable Act and has participated in the "cable home wiring" and "tier buy-through" proceedings. See Comments of the Consumer Electronics Group of the Electronic Industries Association, MM Docket No. 92-260 (Dec. 1, 1992); Comments of the Consumer Electronics Group of the Electronic Industries Association, MM Docket No. 92-262 (Jan. 13, 1993). EIA/CEG has a major interest in the cable compatibility issue, has recently begun meetings with the cable industry specifically relating to the compatibility provisions of the Cable Act, and expects to play an active role in the related proceeding the Commission initiated on January 14.

subscribers use to receive cable service. This portion of the Notice seeks to implement Section 623(b)(3) of the Communications Act (part of Section 3 of the Cable Act), which requires the Commission to prescribe:

"standards to establish, on the basis of actual cost, the price or rate for --

(A) installation and lease of the equipment used by subscribers to receive the basic service tier, including a converter box and a remote control unit . . . and

(B) installation and monthly use of connections for additional television receivers."<sup>3</sup>

EIA/CEG believes the Commission's task in this one portion of the rulemaking may be substantially simplified if appropriate weight is given to other related provisions of the statute. In this regard, the most important provision is Section 624A(c)(2)(C) of the Communications Act (under Section 17 of the Cable Act, which deals with consumer electronics equipment compatibility). This provision requires the Commission to adopt regulations which "promote the commercial availability, from cable operators and retail vendors that are not affiliated with cable systems, of converter boxers and of remote control devices compatible with converter boxes . . . ." <sup>4</sup> The more swiftly and

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<sup>3/</sup> As in the tier buy-through proceeding, we use the term "converter boxes" to include descramblers, addressable converters, and similar devices. All such devices are commonly referred to by consumers as converter boxes (or, sometimes, "cable boxes"), and all need to be open to competitive supply for the legislative to achieve its stated goals.

<sup>4/</sup> Two following subparagraphs, in Section 624A(c)(2)(D) and (E), are also relevant. They establish requirements to (Footnote 4 continued on next page)

completely this provision is implemented, the less will be the need for detailed regulatory strictures governing the pricing of converter boxes, remote control units, and connections for additional television receivers.

Decisions in this docket must be guided by the overarching principles of the legislation. The Cable Act is intended to promote consumer welfare by shielding consumers from the adverse consequences that result from the absence of competition in the delivery of cable services and the provision of related products and services. See generally Cable Act Section 2. Regulation is not an end in itself but a means to protect consumer interests where effective competition is lacking. See Cable Act Section 2(b)(4). Congress specifically intended to try to reduce the market power exercised by cable operators over consumers. See Cable Act Section 2(b)(5).

To the extent that competition can be established and market power reduced, the need for regulation will be correspondingly diminished. Accordingly, the Commission is quite right in drawing the conclusion that Congress "intended to separate rates for [consumer-premises] equipment and installations from other basic tier rates." Notice at ¶ 63. We strongly agree with the notion that unbundling rates for consumer-premises equipment leasing and

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(Footnote 4 continued from previous page)

ensure that consumers are aware of their rights to purchase remote control units and to prevent cable operators from hindering interoperation between cable company-supplied converter boxes and commercially available remote control units.

installation from the rates for cable service "could help to establish an environment in which a competitive market for equipment and installation may develop." Id. Indeed, this is precisely what has occurred in the customer-premises equipment ("CPE") market as a result of the Commission's landmark Second Computer Inquiry ("Computer II"),<sup>5</sup> which unbundled CPE from telephone services.<sup>6</sup> The same salutary results can be expected in the case of consumer-premises equipment associated with cable service.<sup>7</sup>

We do not mean to suggest that the Commission should necessarily track the Computer II approach completely. In that decision, the Commission concluded that it should not regulate the prices of CPE, whether provided by telephone companies or by independent suppliers.<sup>8</sup> By contrast, the present situation involves a statute that specifically requires the Commission to develop "standards to establish, on the basis of actual cost, the price or

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5/ Amendment of Section 64.702 of the Commission's Rules and Regulations, 77 FCC 2d 384 (1980)(subsequent history omitted); see 47 C.F.R. § 64.702 (1991).

6/ There is presumably no need to document here the manifold benefits -- in terms of lower prices, increased innovation, new features, and increased consumer choice -- that have resulted from competition in CPE.

7/ We trust that the Commission is aware of the consumer electronics industry's record of feature enhancements and cost reductions. The ever-improving value delivered to American consumers is illustrated by the Consumer Price Index: compared to a base index of 100 for the period 1982-84, "all products" had increased to 137.9 by December 1991, yet television receivers dropped to 72.3 during the same period. See Electronic Industries Association, The U.S. Consumer Electronics Industry: 1992 in Review at 9 (1992).

8/ See 77 FCC 2d at 445-46.

rate" to be charged by cable companies for converter boxes, remote control units, and connections for additional television sets. Still, if forceful action is taken to ensure the opportunity for development of a competitive market, the degree of regulation needed to prevent overpricing of equipment and installation supplied by cable operators will assuredly be reduced.

We see no basis for exempting equipment used for the provision of both basic tier service and cable programming services from the unbundling requirement. See Notice at ¶ 65. Section 623(b)(3)(A) expressly covers not just converter boxes and remote control units but also "such addressable converter box or other equipment as is required to access programming described in paragraph (8)" (that is, the "buy-through" provision, which refers to programs offered on a per-channel or per-program basis). Any exception to the general principle of competitive supply of consumer-premises equipment should be based only on the most compelling grounds, and EIA/CEG is aware of no compelling reasons why addressable converter boxes cannot be supplied competitively.<sup>9</sup> If, however, the Commission decides to carve out any exceptions to the general rule of competition for consumer-premises equipment leasing and installation,

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9/ As the Commission recognizes, the Conference Committee Report included a change from language referring to "equipment necessary by subscribers to receive the basic service tier" to "equipment used by subscribers to receive the basic tier," and this change was made to give the Commission greater authority to protect the interests of consumers. Notice at ¶ 65 n.93, citing Conference Committee Report at 64.

then the need for effective regulatory standards (and enforcement) to prevent excessive pricing will, of course, become more acute.

Although the legislative concern which led to the provision on equipment regulation appears to have been founded primarily on the overpricing of equipment, the potential for cable companies to underprice their equipment also needs to be considered. We recognize that the House Committee on Energy and Commerce expressed "concern[] that cable operators have been leasing equipment at rates that far exceed its cost" and that it expressed the goal of "requir[ing] cable operators to price these items fairly, and to prevent them from charging prices that have the effect of forcing subscribers to purchase these items several times over [during] the term of the lease." House Commerce Committee Report at 83-84. This is the immediate problem that requires a solution. Looking further ahead, however, there is also a danger that competition in equipment supply could be thwarted by cross-subsidies from cable services (which would allow for cable companies to price their equipment offerings below their costs). This, too, would thwart the goal of promoting competition, and it would defy the statutory mandate that cable operators price their equipment offerings on the basis of "actual cost."<sup>10</sup> It is therefore crucial that the Commission prescribe

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<sup>10/</sup> The risk that cable operators will pursue such strategies, of course, depends largely on the nature of the regulatory scheme applied to cable service pricing and on the extent of competition in video program delivery services.

sufficiently strong cost allocation rules to ensure that cable companies' equipment and installation offerings are not subsidized with cable service revenues.

Turning to the Commission's questions regarding the emergence of competition in installation and lease of connections for additional television receivers, we again stress that the Commission's objective should be to promote competition wherever possible. Here, as with equipment, competition can reduce the need for detailed regulatory oversight. As we have already noted in the cable home wiring proceeding, we envision substantial possibilities for competition, innovation, and beneficial services to consumers as a result of increased consumer control of communications pathways within the home, including coaxial cable.

Accordingly, we urge the Commission to unbundle rates for additional connections from the rates for cable service and to allow consumers the greatest possible flexibility in procuring, installing, rearranging, or otherwise controlling the wiring within their homes. To do so need not entail unacceptable risks of signal piracy nor should it retard service innovation.<sup>11</sup>

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<sup>11</sup>/ For example, EIA/CEG very much hopes that the cable industry will support services to permit consumers to manage information about the growing variety of programming and facilitate consumer selection among channels of interest. This does not, however, require that the cable companies themselves maintain any form of monopoly with regard to supply of the boxes and remote controls used with such a services (just as telephone companies were able to support a change from pulse to DTMF signalling without becoming the exclusive suppliers of touch-tone telephones). As the (Footnote 11 continued on next page)



We reserve judgment on many of the other issues presented in the Notice. The general rule of equipment unbundling, however, should apply to all cable operators. In this context, at least, no exemption is necessary or appropriate for "small" cable systems. See Notice at ¶ 130.

Finally, it is essential to emphasize the importance of making consumers aware of their opportunities to procure equipment and installation from independent suppliers, not just their local cable operators. Although the Commission has asked questions relating to the itemization of subscriber bills, it has not tied those questions to the discussion of consumer-premises equipment leasing and installation. See Notice at ¶ 175. We believe that creating a meaningful opportunity for competition in these areas inevitably requires that the cable companies' charges for products and services provided within the home be severed from charges for basic service and for cable programming services.

Only if equipment leasing and installation charges are billed separately can consumers become aware of the potential savings to be reaped by using competitive sources of supply. Only in this way can cable operators be prevented from continuing the practices which the Cable Act rightly sought to terminate.

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(Footnote 11 continued from previous page)

Commission is aware, the consumer electronics industry has developed a system which makes program ID and other information available through the closed-caption decoding and display circuitry that will be required to be incorporated in television receivers later this year.

III. CONCLUSION

We appreciate the opportunity to share these views. We will welcome a continuing dialogue with the Commission and with other interested parties on these important subjects and other related topics.

Respectfully submitted,

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